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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/059,551      | 01/29/2002  | Brry Stewart Smith   |                     | 8120             |

7590

02/18/2004

Barry Stewart Smith  
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EXAMINER

DONNELLY, JEROME W

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3764

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/059551

Applicant(s)

SMITH

Examiner

Jerome W Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 11-17-03
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21+22 is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected. 1-4679 1617 and 19-23
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to. 5, 8, 10-15 and 18
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Claims 5, 8, 10, 11, 12, 13, 14, 15 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 21 and 22 are allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 4, 7, 9, 16, 17 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen.

In regard to claim 1 note element (31) as being first means, note element (41) as being a second means and elements 21 and 25 as being a third means.

In regard to claim 2 note seat back 25.

In regard to claim 3, note element 27.

In regard to claim 4, the pivotal linkages between the elements are considered as swivel connections.

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Chen (243) in view of Chen (568).

In regard to claim 9, Chen (243) element (21) is considered as a sitting support, elements 31, 41 and 25 as third means element (27) as a second means and a first means including a frame 10 and 22, wherein sitting is rigidly mounted to frame member

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22, said frame including a main support beam having ends both ends mounted to stabilizers at least one end being higher than the other end.

Chen (243) however does not disclose adjustability of the height of the frame. Chen (568) however discloses the desirability of his device including the feature of frame height adjustability (see element 13).

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a similar feature on the device of Chen (243) for the purpose of varying the difficulty of the exercise routine of Chen (243).

In regard to claim 16 elements 27 is considered as a swivel connector and a portion of said second and third means. Element 27 is considered to the frame through pivot member (12).

Claims 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (243).

The device of claim 19 is clearly by Chen.

In regard to claim 23 the claim is so broad so as to read on the first means including element 31 and 41 and so broad, so as to read on element 31 and 41 moving in different directions such as a back and forth motion. The applicant is not claiming that the different directions of motion be performed simultaneously.

The seat back 25 is considered as a third means.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Drecksell.

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Chen discloses the device of claim 6 as substantially claimed absent the feature of his device comprising one or more tension bands capable of being configured in a plurality of configurations to selectively adjust a level of resistance.

Drecksel however discloses a similar device wherein a plurality of bands (126) may be connected to the device in a plurality of configurations to selectively adjust resistance.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art provide in addition to or as an alternate, band members to the device of Chen as a known resistance means in the art, in view of the plurality of band members disclosed by Drecksel.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jerome W Donnelly at telephone number 308-2668.

Donnelly/DI

April 2, 2004

Jerome W. Donnelly  
Primary Examiner

A handwritten signature in black ink, appearing to be 'Jerome W. Donnelly', written over the printed name and title.